No. 80-254

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1980

THE PEOPLE OF THE STATE OF CALIFORNIA
*Petitioner,*

vs.

ALMON BOYD SMITH
*Respondent.*

## Supplement to Petition

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On July 22, 1980, Justice Rehnquist granted our application for stay "pending proceedings in the California Courts to determine whether the Superior Court of California, Alameda County, has authority to reinstate the action previously dismissed." The California Court of Appeal decided that issue in the negative by written opinion filed on January 27, 1981.

Under the California Rules of Court, Rule 24, subdivision (a), the Court of Appeal decision is not final until 30 days from the date of filing. (See Appendix A). Then and only then are we allowed to seek review in the California Supreme Court. This must be done within 10 days thereafter. California Rules of Court, Rule 28, subdivision (b). (See Appendix B). The period during which our petition may be filed begins on February 26, 1981, and ends on March 8, 1981. We are currently preparing our petition for hearing to the California Supreme Court and will file a copy of that petition with this Court also.

Respondent acknowledges that we have already informed him of this intention but nevertheless seems to request that this Court should now act on his assertion of mootness. The case is not moot for the simple reason that the California litigation is not yet final. Action by this Court is neither required nor desirable until the California Supreme Court finally rules on our claim that the purposeful but inadvertent assertion by the public defender to the trial court that this case was ended does not justify the dismissal so obtained.

The petitioner therefore requests that the respondent's request in his letter of January 29, 1981, that this Court dismiss the petition for certiorari before the California litigation becomes final be denied.

The petitioner will inform this Court of the progress of the California litigation.

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**(Appendix follows)**

# Appendices

## Appendix A.

Rule 24. Decision of Reviewing Court

(a) [When decisions become final] All decisions of the reviewing courts shall be filed with the clerk, who shall forthwith transmit a copy of the opinion to the lower court or tribunal and to the parties. A decision of the Supreme Court becomes final 30 days after filing unless the court orders a shorter time or, prior to the expiration of the 30 day period or any extension thereof, orders one or more additional periods of time not to exceed a total of 60 additional days. A decision of a Court of Appeal becomes final as to that court 30 days after filing, except that the decision becomes final as to that court immediately after filing upon the denial of a petition for a writ within its original jurisdiction or a writ of supersedeas, without issuance of an alternative writ or order to show cause, or the denial of an application for bail or to reduce bail pending appeal, or the denial of a transfer to a Court of Appeal after certification in a case within the original jurisdiction of a municipal or justice court. When a decision of a Court of Appeal is final as to said court, it is not thereafter subject to modification or rehearing by said court. Where an opinion is modified without change in the judgment, during the time allowed for rehearing, such modification shall not postpone the time that the decision becomes final as above provided; but if the judgment is modified during that time, the period specified herein begins to run anew, as of the date of modification.

## Appendix B.

Rule 28. Hearing in Supreme Court[1]

(b) [Time for filing petition] A party seeking a hearing must serve and file a petition therefor within 10 days after the decision of the Court of Appeal becomes final as to that court, except that a petition may not be filed after denial of a transfer to a Court of Appeal after certification in a case within the original jurisdiction of a municipal or justice court. Proof shall be made of the delivery or mailing of one copy of the petition to the clerk of the Court of Appeal which rendered the decision. When such copy is delivered to the clerk of the Court of Appeal, he shall forthwith transmit to the clerk of the Supreme Court the original record, briefs, and all original papers and exhibits on file in the cause. If the petition is denied, the clerk of the Supreme Court shall return them to the clerk of the proper Court of Appeal. If the petition is granted, they shall be retained and properly numbered by the clerk of the Supreme Court.